SINGLE BENCH

(9)

(2)

c/f 100/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.No.....6863.....(C)/2006

PETITIONER:

Kshamanidhi Patel S/o Shri Gajadhar Patel, Aged 41 year's Working as L.D.T. (Tribal Department) at Govt. Higher Secondary School, Kotba, R/o Lailunga, Tehsil Lailunga, Distt. Raigarh (C.G.)

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P.R. No. 6994/06
Presented by Shri A. Pedersen
dated 2-12-06

VERSUS

RESPONDENTS:

1. State of Chhattisgarh Through : Secretary, Department of Tribal Welfare, Mantralaya D.K.S. Raipur (C.G.)

2. Asst. Commissioner, Tribal Welfare Deparment District Jashpur (C.G.)

OATH COMMISSIONER
APARNA MALVIYA
CG
26/11/06
Bilaspur Chhattisgarh

(32)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (s) No. 6863 of 2006

Petitioner : Kshamanidhi Patel

Versus

Respondents : State of Chhattisgarh & another

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Rahul Jha, Advocate for the Petitioner.

Shri V. V. S. Moorthy, Deputy Advocate General with Smt. Anju Ahuja, Deputy Govt. Advocate for the State/respondents.

ORDER

(Passed on this 12th day of December, 2006)

1. The petitioner is working as Assistant Teacher (L.D.T.) in the government school. In the course of his service as Assistant Teacher, the petitioner has obtained D.Ed. certificates on his own expenses before 1.3.1999.

2. Learned counsel for the petitioner submits that the 'Basic Training Institute' (B.T.I.) certificate has been renamed by the order of the State Government as 'Diploma in Education' (D.Ed.) certificate. The petitioner, who has obtained D.Ed. certificate prior to 1.3.1999 is entitled to the same relief as is granted to the candidates who had obtained B.T.I./B.Ed. certificates on their own expenses as per the circulars dated 24.12.1998 and 1.3.1999.

3. Learned Deputy Advocate General, appearing for the respondents/State, produced a copy of the memo dated 12.12.2006 issued by the Director, Public Instructions, Chhattisgarh, notice dated 28.1.1995 issued by the Secretary, Board of Secondary Education, Bhopal, and the prospectus of Diploma in Education Examination and submits that the nomenclature of the Basic Training Institute i.e. B.T.I. has been renamed as Diploma in Education i.e. D.Ed. Learned Deputy Advocate General also produced a copy of the circular dated 24.12.1998, issued by the School Education Department, Government of Madhya Pradesh, Bhopal, allowing two increments to the teachers who have obtained B.Ed., M.Ed.,B.T.I. examination

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certificates. The documents are taken on record in W. P. No. 5862/2006.

4. According to learned counsel for the petitioner, the petitioner is entitled to two advance increments in view of the decision of this Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another {2006 (II) MPJR-CG 96}. This Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), came to the conclusion that the teachers, who had obtained B. Ed. /B.T.I. Certificate on their own expenses, are covered by the circular dated 24.12.98 (Annexure P/7) issued by the State Government of Madhya Pradesh.

5. Further in the matter of Smt. Manorama Shrivastava Vs. State of M.P. and others { 2000 (1) M.P.L.S.R. 136 } the Madhya Pradesh State Administrative Tribunal, Gwalior Bench, while considering the circular dated 1.3.1999 wherein, it is provided that the Assistant Teachers, who have acquired B.Ed. degree at their own cost between 23.10.1964 and 7.5.1973 shall be entitled to two advance increments, relied on decision in the case of Rakesh Kumar Shrivastava Vs. State of M.P. & others passed in O.A.No. 1632/99, decided on 12.10.1999 wherein it is observed that the circular dated 1.3.1999 cannot be made applicable retrospectively. Thus, a teacher, may be Assistant Teacher, who has obtained B.Ed. degree before 1.3.1999 is entitled to two advance increments.

6. It is pointed out by learned counsel appearing for the petitioner that the then State of Madhya Pradesh had filed a Special Leave Petition against the orders passed by the Tribunal and the Hon'ble Supreme Court dismissed Special Leave Petition No. 1999/2000 filed against the order of the Tribunal. Therefore, the direction to the effect that the circular dated 1.3.1999 cannot be made applicable retrospectively, passed by the Tribunal, becomes final and the same shall be applicable to all the Assistant Teachers who have obtained B.Ed./B.T.I. certificate before 1.3.1999. It is further substantiated by a circular dated 17.10.2003 issued by the present State of Madhya Pradesh wherein the circular clearly states about the decision of the Supreme Court.

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7. Learned counsel for the petitioner further submits that the facts and question of law involved in the present case are squarely covered by decision of this Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), to which learned counsel appearing for the respondents fairly concedes and agrees with the averment made by learned counsel appearing for the petitioner.

8. Accordingly, in the event D.Ed. certificate holders are equal to B.T.I./B.Ed. certificate holders, the petitioner is entitled to the same relief in terms of the orders passed in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), subject to verification of the fact as to whether the petitioner has acquired D.Ed. Certificate on his own expenses as per the circulars dated 24.12.1998 & 1.3.1999 and further whether he has been paid two advance increments or not. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur